

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

THE CANNERY, LLC	)	
	)	
	)	
Plaintiff	)	C.A. No. 08C-05-086 RRC
v.	)	
	)	
COVAK, INC. and	)	
DEMETRIOS SCLAVOUONOS	)	
	)	
Defendants	)	

Submitted: December 5, 2008  
Decided: February 27, 2009

Upon Plaintiff's Motion for Partial Judgment by Default.  
**GRANTED.**

**ORDER**

Jeffrey M. Weiner, Esquire, Jeffrey M. Weiner, P.A., Wilmington,  
Delaware, Attorney for Plaintiff.

R. Stokes Nolte, Esquire, Reilly, Janiczek & McDevitt, P.C., Wilmington,  
Delaware, Attorney for Defendants.

COOCH, J.

This 27<sup>th</sup> day of February, 2009, upon consideration of Plaintiff's  
Motion for Partial Judgment by Default it appears to the Court that:

- 1) This case arises from a breach of a lease agreement. Plaintiff, the  
owner of a shopping center, alleges that Defendants breached the

terms of its lease by failing to pay its proportionate share of property taxes for 2007-2008, rent increase commencing January 1, 2008, and any rent commencing February 1, 2008.

- 2) Pursuant to 10 *Del. C.* § 3901(a), “the plaintiff may specifically require the defendant or defendants to answer any or all allegations of the complaint by an affidavit setting forth the specific nature and character of any defense and the factual basis therefore, by the specific notation upon the face of the complaint that those allegations must be answered by affidavits.” The caption of the Complaint in this instant action states: “All allegations of the Complaint must be answered by affidavit in accordance with the provisions of 10 *Del. C.* Section 3901.”<sup>1</sup>
- 3) Plaintiff moves for entry of partial judgment by default pursuant to 10 *Del C.* § 3901(d), on the grounds that the affidavit attached to Defendants’ Answer fails to meet the requirements of 10 *Del. C.* § 3901(a).
- 4) The purpose of Section 3901 “is to assure a speedy disposition of claims of the type specified in the statute by permitting defenses only in those instances where the defendant states under oath that he

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<sup>1</sup> Comp., Docket Item (“D.I.”) 1.

believes he has a valid defense and sets forth the defense.”<sup>2</sup> Absent such qualifying defense, the statute provides for entry of judgment without further delay . . . . The test is whether the affidavit sets forth a condition of facts upon which the court can form an opinion with respect to the legality and sufficiency of the defense.”<sup>3</sup>

- 5) Defendants’ affidavit did not comply with Section 3901(a) by setting forth “the specific nature and character of any defense and the factual basis therefore;” rather, the substance of Defendants’ Affidavit states: “the Answers to the Complaint are true and correct to the best of her (sic, his) information, knowledge and belief.”<sup>4</sup>
- 6) In Defendants’ Opposition to Motion for Partial Judgment by Default, filed July 21, 2008, Defendants offered to “work with counsel for the plaintiff to provide some additional response by way of a further affidavit.”<sup>5</sup> However, Defendant Demetrios Sclavouonos’ undated Supplemental Affidavit, served by Defendant Sclavouonos on November 18, 2008, does not address all of the deficiencies

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<sup>2</sup> *First Fed. Sav. and Loan Assoc. v. Damnco Corp.*, 310 A.2d 880, 882 (Del. Super. 1973).

<sup>3</sup> *Id.*

<sup>4</sup> Affidavit of Demetrios Sclavounos, D. I. 3.

<sup>5</sup> Defs. Opp’n to Mot. for partial Judgment by Default, D.I. 5 at ¶ 5.

complained of by Plaintiff. First, in their Answer Defendants contend that “[a]nswering Defendants paid some rents in 2008 but admits that not all rents were paid” without setting forth with specificity which rents were paid. Plaintiff provided tenant ledgers for units 3E, F, G, H, I, & J for every charge and payment during the time period in dispute, but neither Defendant’s Affidavit nor Supplemental Affidavit sets forth the factual basis to support a finding that any disputed rents were paid.<sup>6</sup> Second, Defendants contend in their Affirmative Defenses that “Plaintiff released the personal guarantee and have no valid claim against Mr. Sclavouonos individually.” Defendants addressed this issue in the Supplemental Affidavit only by stating, “I specifically dispute that I have any personal liability in this matter as the operable lease vitiated the personal guarantee” and by attaching the lease. However, this statement does not provide a factual basis for the defense. Third, Defendants also contend in their Affirmative Defenses that “Plaintiffs have failed to mitigate their damages.” Again, Defendants failed to set forth the factual basis for this defense in either affidavit.

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<sup>6</sup> Pl. Letter of Nov. 16, 2008, D.I. 12.

7) Therefore, because Defendants have failed to comply with the requirements of 10 *Del. C.* § 3901(a), Plaintiff is granted default judgment in the amount of \$39,360.00 plus pre- and post-judgment interest, pursuant to 10 *Del. C.* § 3901(d).

**IT IS SO ORDERED.**

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Richard R. Cooch

cc: Prothonotary